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JUN 17 2004

OFFICE OF PETITIONS

In re Application of	:	
Pope, et al.	:	
Application No. 10/643,806	:	ON PETITION
Filed: August 18, 2003	:	
Attorney Docket No.	:	
05261.058/6069.2P		

This is a decision on papers styled "Petition for Filing Date" filed on March 22, 2004, which is being treated as a petition under 37 CFR 1.53, requesting that the above-identified application be accorded a filing date of August 18, 2003, including Figures 2R-1, 2R-2, 2S-1, 2S-2, 2T-1, 2T-2, 3AB, 4A-D, 5A-G, 6A-1, 6A-2, 6B-1, 6B-2, 7AB, 8AB and 9-13, as described in the specification.

The application was filed on April 18, 2003. However, on February 3, 2004, the Office of Initial Patent Examination (OIPE) mailed a "Notice Of Omitted Item(s)" (Notice) that stated the application had been accorded a filing date, but Figures 2R-1, 2R-2, 2S-1, 2S-2, 2T-1, 2T-2, 3AB, 4A-D, 5A-G, 6A-1, 6A-2, 6B-1, 6B-2, 7AB, 8AB and 9-13, as described in the specification appear to have been omitted.

In response, on March 22, 2004, the instant petition and thirty (30) sheets of drawings that contain Figures 2R-1, 2R-2, 2S-1, 2S-2, 2T-1, 2T-2, 3AB, 4A-D, 5A-G, 6A-1, 6A-2, 6B-1, 6B-2, 7AB, 8AB and 9-13, as described in the specification, were submitted. The petition states, "Enclosed for your review is a copy of the postcard receipt by the U.S. Patent and Trademark Office with a filing date and serial number indicating Thirty (30) Sheets of Drawings were received with the Specification. ... Each of these documents was originally submitted on August 18, 2003 with the patent application." However, the aforementioned copy of the postcard receipt cannot be located in the application file after a thorough review.

As such, petitioner's argument is not persuasive. The Patent and Trademark Office (Office) file is the official record of the papers originally filed in this application. A review of the official file reveals that eight (8) pages of drawings were filed on August 18, 2003. The pages containing Figures 2R-1, 2R-2, 2S-1, 2S-2, 2T-1, 2T-2, 3AB, 4A-D, 5A-G, 6A-1, 6A-2, 6B-1, 6B-2, 7AB, 8AB and 9-13, were not filed on August 18, 2003, since no such pages are present in the file. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. Petitioner has not submitted any evidence to support petitioner's allegation.

The Office has a well established and well publicized practice of providing a receipt for papers filed in the Office to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the Office with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the Office of all the items listed thereon on the date stamped thereon by the Office. See MPEP 503.

A copy of a postcard receipt that would indicate receipt of the omitted figures has not been submitted. If petitioner has a postcard receipt date stamped by the Office that indicates receipt of Figures 2R-1, 2R-2, 2S-1, 2S-2, 2T-1, 2T-2, 3AB, 4A-D, 5A-G, 6A-1, 6A-2, 6B-1, 6B-2, 7AB, 8AB and 9-13 (or additional pages of drawings), on August 18, 2003, then the postcard receipt or a copy thereof should be supplied.

At the present time, the petition must be dismissed. However, this decision is made without prejudice to reconsideration. If petitioner has a postcard receipt acknowledging receipt of Figures 2R-1, 2R-2, 2S-1, 2S-2, 2T-1, 2T-2, 3AB, 4A-D, 5A-G, 6A-1, 6A-2, 6B-1, 6B-2, 7AB, 8AB and 9-13 (or additional pages of drawings), on August 18, 2003, the postcard receipt or a copy thereof should be supplied, accompanied by a letter requesting reconsideration of this decision. No additional petition fee is required for such a request.

Any request for reconsideration should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely. This time period may not be extended pursuant to 37 CFR 1.136.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition  
Commissioner for Patents  
Box 1450  
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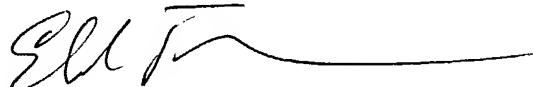
By FAX: (703) 872-9306  
Attn: Office of Petitions

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The application will maintain the August 18, 2003 filing date, and the application papers (i.e. the original disclosure of the invention) will include only those application papers present in the USPTO on the filing date.

The application will be forwarded to The Office of Initial Patent Examination for further processing.

Telephone inquiries should be directed to the undersigned at (703) 306-9200.



Edward J. Tannouse  
Petitions Attorney  
Office of Petitions  
United States Patent and Trademark Office